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July 16, 1996

Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: Comments of U.S. Long Distance, Inc. in CC Docket No. 92-77
Second Further Notice of Proposed Rulemaking

Dear Secretary:

Enclosed herein please find an original and nine (9) copies of the Comments of U.S. Long Distance, Inc. in the above referenced proceeding, submitted herewith for filing in accordance with the schedule set forth in the Commission's order seeking comment released June 6, 1996.

Please stamp the enclosed copy of this letter for verification of your receipt and return to the undersigned in the postage paid envelope provided. Please contact the undersigned with any relative questions or requests. Your courtesies are greatly appreciated.

Sincerely,

Kenneth F. Melley, Jr.
Vice President of Regulatory Affairs

KFM/jms

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for	)	CC Docket No. 92-77
InterLATA 0+ Calls	)	

COMMENTS OF U.S. LONG DISTANCE, INC. ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

July 16, 1996

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INTRODUCTION

U.S. Long Distance, Inc. ("USLD") is a competitive telecommunications provider authorized to provide telecommunications services, including alternate operator service, ("AOS"), used herein to define such services as provided to aggregator locations, [1] on a local, intraLATA, interLATA, intrastate, interstate and international basis throughout the United States. USLD has been providing AOS service since 1986, and has been a party to this and other related proceedings since 1988. USLD has participated in nearly every state rulemaking regarding AOS service, either directly or through its trade associations, and is currently authorized to provide AOS service in 47 states. USLD is a member of the trade association CompTel and has expressed its total support for the CompTel proposal set forth by the CompTel Coalition [2] on March 8, 1995.

The Commission is currently seeking comment on a proposal to require rate announcements on AOS calls when such rates exceed 115% of the composite rate for operator services charged by AT&T, MCI and Sprint. USLD finds the proposal set forth in this SFNPRM to be unworthy of further consideration for a multitude of reasons. USLD has repeatedly stated in this proceeding that it desires to address the issue of end user dissatisfaction, confusion, or lack of knowledge with respect to interstate AOS rates. For that reason, USLD continues to strongly advocate, along with the other CompTel Coalition members, that the Commission adopt the terms set forth in its proposal

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[1] Aggregators as defined in 47 C.F.R. §64.708(b).

[2] Second Further Notice of Proposed Rulemaking - CC Docket 92-77, rel. June 6, 1996 ("SFNPRM"), paragraph 11.

presented to the Commission March 8, 1995. Notwithstanding the adoption of the CompTel proposal and its proven method of fairly addressing end user concerns without unnecessarily discriminating against one or a class of carriers, USLD believes the Commission should quickly discard the proposal set forth in the SFNPRM for the reasons set forth hereunder.

SUMMARY

USLD applauds the Commission for finding that the record in this proceeding does not support the adoption of a system of billed party preference. USLD has participated in this docket since its inception in 1992 and is happy to offer its total support for the repudiation of this proposal. Clearly, the Commission has made the proper decision.

However, USLD finds little logic in the timing and direction of the Commission's SFNPRM. Contrary to the statistics offered by the Commission that end user complaints are in the rise, [3] USLD customer service information supports the opposite conclusion. Furthermore, the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA") specifically prescribed the authority granted to the FCC in regards to the optional implementation of a secondary oral announcement. The SFNPRM seeks to extend far beyond this statutory authority.

The proposal carries unsubstantiated threshold values, which are not supported by the record, and are contrary to previous Commission action regarding the same topic.

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[3] SFNPRM, page 7, footnote 22.

The proposal is also an unproven method to affect end user dialing patterns. The proposal furthermore is impractical, in application and enforcement. The proposal draws most of its tentative conclusions from the obscure and unsupported information filed by the Colorado PUC, failing to acknowledge more the more bona fide factual information provided in this docket by Bell Atlantic, Bell South, NYNEX, CompTel, the APCC, and other market participants. The proposal, finally, is unnecessary, since an alternative exists which is supported by the majority of filers and has proven effective in several states.

In these comments, USLD will conclusively show that the proposal set forth within the SFNPRM, for many reasons, is the wrong answer. USLD urges the Commission again to adopt the proposal set forth in the CompTel Coalition proposal, a proven method of addressing consumer complaints, and one which, unlike the SFNPRM proposes, is legally defensible under federal telecommunications law.

COMMENTS

1. End User Complaints

Taking into consideration that the Commission uses data from August 1995 to reach its tentative conclusion in June 1996, it cannot be expected that any accurate conclusion can be drawn from such aged data. In fact, the Commission states in its footnotes, "The rate of such complaints appears to be increasing. More than 525 complaints about OSPs interstate rates and more than 115 complaints about their intrastate rates were received in August of 1995."[4] Since this rate of increase was of particular importance in the Commission's data supporting its tentative conclusions in the SFNPRM, USLD believed it was important to report on its own AOS complaints received by the FCC since August 1995.

In August 1995, the FCC received 10 complaints regarding the AOS service provided by USLD.[5] USLD has not lowered its rates since then, nor has it lost any significant call volumes. The FCC received four more complaints regarding USLD's AOS service in September 1995, five in October, and none in either November or December of 1995. Through July 1996, nearly one year later, USLD has record of only two complaints being filed with the FCC in all of 1996, an incidence of complaint of approximately 0.00005%. Based upon this data, USLD cannot support the tentative conclusion that a "substantial number" consumers are surprised and dissatisfied with its

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[4] id.

[5] These represented nearly 25% of all of the 42 complaints filed with the FCC about USLD operator services for the year ended December 1995. USLD completed and successfully billed approximately 4.2 million interstate AOS calls in 1995, giving it an incidence of complaint of 0.001%

interstate AOS services. [6] The FCC has not demonstrated for the record that such rate of complaint is not on the decrease. If the rate of complaint is not a significant motivation for the FCC's desire to pursue the adoption proposed in the SFNPRM, the FCC should substantiate its tentative conclusions in some other context than consumer complaints.

2. FCC does not have Statutory Authority under TOCSIA [7] to implement the Proposal

The FCC's authority to selectively impose additional branding requirements upon particular carriers was clearly defined by Congress, who specifically defined the parameters within which the FCC could take such further action. In his address to the Speaker of the House, subcommittee Chairman Edward Markey stated for the record;

> "Under the legislation, the FCC must review the rates filed by each operator service provider and if they appear unjust or unreasonable, require that the operator service provide either justify its rates or announce the availability of its rates to the consumer at the beginning of each call." [8]

As a result of Congress' stated intent, the new law promulgating the authority for the FCC to impose discriminatory modified branding requirements, outside the scope defined as generically required by the Act, was codified under 47 U.S.C. §226 (h)(2), which states;

> "Review of informational tariffs. - - If the rates and charges filed by any provider of operator service under paragraph (1) appear upon review by

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6 Some complaints refer to network problems or the end user's inability to recall accepting responsibility for certain charges, etc. In other words, not all complaints cited by the FCC refer to AOS rates.

7 Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA)

8 Congressional Record - House; H 8746, October [illegible] 1990

> the Commission to be unjust or unreasonable, the Commission may require such provider of operator services to do either or both of the following:
>
> (A) demonstrate that its rates and charges are just and reasonable, and
>
> (B) announce that its rates are available on request at the beginning of each call."

Chairman Markey specifically defined the permissible boundaries the FCC could operate under in terms of imposing a modified brand, such that the carrier whose rates appeared to be unreasonable would be required either to justify its rates, indicating that the carrier has the right to that opportunity if the FCC were to make such a finding on appearance, or announce that its rates are available upon request. The statute irrefutably supports Congress intent, by defining without qualification the two options available to the FCC when it reaches a determination that a carrier's operator service rates appear to be unreasonable. TOCSIA does not empower the FCC to selectively impose statements upon certain classes of carriers, and can therefore not be cited as the cause for doing so, as concluded by the National Association of Attorneys General. [9]

Under TOCSIA, the FCC is authorized to take specific action on the appearance of unreasonableness. These actions have been defined above and are exclusive of any other similar or related actions in the statute. However since the FCC is not proposing to adopt the remedy specifically created by Congress and promulgated in the statute under

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[9] PETITION OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL TELECOMMUNICATIONS SUBCOMMITTEE FOR RULES TO REQUIRE ADDITIONAL DISCLOSURES BY OPERATOR SERVICE PROVIDERS OF PUBLIC PHONES; CC Docket RM No. 8606, filed February 9, 1995 ("the NAAG Petition")

TOCSIA, it therefore remains bound by its general obligation under Section 201 (b) of 47 C.F.R. Chapter 5 subchapter II, to take action on substantive facts rather than an appearance of unreasonableness. The statute therein dictates that any charge which is shown to be unjust and unreasonable shall be declared to be unlawful. It does not, however, instruct the FCC to create regulations for a category of rates that it has not yet determined to be unreasonable, but believes *might* be unreasonable. Absent a specific finding that AOS rates are definitively unreasonable and unjust, the FCC does not have the statutory authority to enact the proposal it sets forth in the SFNPRM.

The FCC must make a finding on the reasonableness of AOS rates before it can take permanent action in the public interest under Section 201 (b) of the Telecommunications Act of 1934. AOS providers should then have the opportunity to demonstrate that their rates are not unreasonable before such a final ruling could be entered. Otherwise, the FCC must rely on the authority granted under TOCSIA to enter a finding in the 'appearance' of reasonableness, and in that event the FCC is limited to the remedies prescribed by the law.

3. Proposal is an inconsistent reactions to Consumer Complaints under Section 208(a) of the Telecommunications Act

Consumer complaints at the root of this proceeding have been categorized by the FCC in terms defined by Section 208 of the Telecommunications Act of 1934, "Complaints to Commission; investigations, durations of investigation; appeal of order concluding investigation." This section of the statute defines the FCC's role in participating in the processing and resolution of end user complaints. The section states;

> "Any person, any body politic, or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition, ..." [10]

further stating;

> "If such carrier or carriers shall not satisfy the complaint within the specified time period or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper." [11]

The Commission therefore has the authority to pursue additional remedies outside the context of the complaint process as established by statute on those occasions when a common carrier has been accused of doing anything in contravention of the provisions of 47 U.S.C. Chapter 5. In proposing to impose the branding requirement set forth in the SFNPRM, however, the FCC proposes to act upon consumer complaints under Section 208 without reaching a conclusive finding that the class of carriers it proposes to encumber with new regulations have violated any provision of the referenced statute. Under Section 208, the FCC does not have the authority to take further action on consumer complaints which are not regarding specific violations of statute.

4. Proposal has not been shown to be in the Public Interest

No evidence has been entered into the record supporting the proposal set forth in the SFNPRM from the perspective of the consumers. In reviewing the end user

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[10] 47 U.S.C. §208(a)

[11] id.

complaints received by USLD over the past several years regarding interstate AOS charges, those consumers who have complained consistently called for the FCC to regulate AOS rates. USLD has never received notice of a complaint in which a consumer requested that a branded announcement of the charges precede the connection of an operator assisted call. The public interest would be better served if the FCC would isolate those rates and charges that are, in fact, unreasonable and address them affirmatively through existing regulations. There is no evidence whatsoever that an announcement of rates prior to the connection of a call will have any affect on the calling patterns or behavior of the consuming public. Callers may hang up at the first sound of such an announcement, even if the rates announced are less than those charged by their preferred carrier, which would unfairly discriminate against the "non-traditional" carriers. Callers may completely ignore such a warning, as certain parties to this proceeding would hold to be the case with respect to the announcement of the AOS providers name on every AOS call, as well as the posted information with regard to the availability of rate quotes and access to other carriers. If the rate announcement is ignored, the Commission has accomplished nothing. Such a proposal has no model against which its underlying premise has been tested, and until such a model is a part of the record in this proceeding, the Commission cannot move forward and impose this far reaching scheme.

5. The threshold proposed by the FCC is unsubstantiated and contradictory to precedent

The Commission proposes to establish a threshold of 15% above the average rates of the three largest carriers as the trigger for the application of the announcement. [12] The Commission fails to document any rationale for this benchmark, as opposed to the factually supported threshold proposal set forth by the CompTel Coalition. The Commission only cites Ameritech as having indicated its belief that the threshold should be 20% above the aggregate rate of AT&T, MCI and Sprint. [13] The Commission, therefore, appears to be suggesting that this threshold of 15% above the three biggest carriers' average rate represents the limit of the appearance of reasonableness, since the Commission calls for a branding notice on calls in excess thereof. The Commission does not propose to rule definitively upon whether or not the threshold it proposes represents anything beyond the "appearance" of unreasonableness, since it does not call for cost information associated with AOS calls, thus this proposed threshold cannot be debated under any other context than the rules promulgated under TOCSIA. As proven earlier, the Commission has no authority under TOCSIA to impose the type of brand proposed in this proceeding. Furthermore, under TOCSIA, the Commission proposal contradicts its earlier actions regarding AOS services.

In an Order released in CC Docket 91-335 on December 23, 1991, the FCC terminated a proceeding in which they had tentatively concluded that USLD's rates appeared at the time unjust and unreasonable. The Commission adopted this Order in response to USLD adjusting its rates to a threshold that was approximately 173% of

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12 SFNPRM at 24.

13 id. at 18.

AT&T's then current comparable rate. In other words, as a result of their investigation, the FCC did not determine upon review that 173% of AT&T's rates justified the imposition of the same branding requirement the Commission now proposes to impose for rates that are approximately 15% over AT&T's rates. The Commission now proposes to impose the same contemplated penalty today that was discharged in 1991, after 5 years of consumer education with respect to the provision AOS and the alternatives available to consumers under TOCSIA, which the Commission was to supervise, presuming that callers are less knowledgeable about their choices today than five years ago. Such an action is clearly not supported by the record, particularly in light if the increased usage of dial around access and, in the case of USLD, its decrease in the number of end user complaints. Also, this means the FCC is concurrently allowing AT&T to continue to charge rates that are approximately 34% greater today than they were in 1991, while the remainder of the industry will be required to lower their rates from the threshold previously enforced by the commission in 1991 by 11% in order to be able to provide a competitive service offering with the "non-branding" carriers. Clearly, the Commission is proposing to discriminate against a class of carriers without providing any adequate or defensible legal justification.

The Commission fails to recognize that one of the participants in the NAAG Petition, the Attorney General of the state of Michigan, recently saw his state legislature enact a state law that establishes what a "reasonable" threshold percent is in terms of comparable AOS services between AT&T, MCI and Sprint and all other AOS providers. This law was enacted as a result of the Michigan Attorney General's action to establish a range of reasonable rates above which could subject an AOS provider to regulatory

penalty pursuant to the state's laws. The Michigan law, however, finds this threshold to be at 300% above the aggregate rate of those carriers, not at 115%. The Commissions proposal, therefore, may overreach even its author's intended scope.

6. The Commission's proposal is Impractical in Application and Enforcement

The Commission proposes to require that all AOS providers charging rates in excess of a certain threshold announce its rates prior to connecting any call.

> "We find that the record provides strong support for requiring OSPs to inform consumers of the total charges for which they would be liable for the initial rate period and each subsequent rate period if those charges, including any and all surcharges, exceed the benchmark, and thus consumers' expectations, discussed above ."[14]

Presuming the benchmark rate is quantifiable, this requires the AOS provider to ascertain the destination, duration and billing method desired by the customer prior to call processing. The information today is provided to those callers requesting rate quotes prior to completing a call. However, the technology involved in that process, in terms of the services offered by USLD, requires that a caller be handed off to a non-operator supervisor, who solicits the information from the customer and manually inputs the information into a system separate from the call processing systems. Requiring end users to go through this task each time they place an AOS call, or even perhaps on emergency calls, is more likely to result in greater frustration, not less, on the part of the vast majority of USLD customers today who do not find the rates unreasonable or meriting of a complaint. Does the Commission suggest that callers, upon hearing this announcement,

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[14] id. at 35.

would make an access code call or otherwise avoid completing the call they are attempting to place? USLD believes it is likely that if the caller had established a calling card account with their preferred carrier, they are more likely to have placed the call on an access code basis in the first place.

Furthermore, the Commission offers no credible evidence that it will be able to enforce the compliance of this branding threshold Big three carrier rates are subject to change at any moment, and AT&T continues to develop greater and greater detail in terms of which rates apply in the different price components during which different time of day in different geographic location using different billing methods. Furthermore, under which category do the entities ASC Telecom, Sprint's AOS affiliate, and Telecom USA, MCI's AOS affiliate, lie?

The only solution is that the three largest carriers must then be regulated by the FCC as dominant carriers, and never permitted the luxury of forbearance with regard to those rates that constitute the regulations by which all other AOS companies are to be measured. If these carriers on the contrary are afforded forbearance, as contemplated in an ongoing proceeding currently before the Commission, there is no means by which the Commission can expect to regulate compliance with this proposal. The two concepts are mutually exclusive.

7. <u>The proposal is unproven, particularly in light of the forthcoming changes in the industry</u>

The Commission's proposal is not supported by any substantive evidence that it is an effective means to the Commission's desired ends: fewer complaints. In fact, the

proposal itself could be described as self-contradicting, by claiming end users will react to an announcement, even though AOS providers today already provide announcements. [15] The Commission would be negligent in ordering the investment into new systems for a certain class of providers (who will then have to recover the expense of any new investment from the revenues it receives from those same calls) unless the Commission had conclusive evidence that the announcement requirement will have its intended affect. Would the Commission be satisfied with a result in which carriers played the prescribed announcement, but end users failed to take notice? If not, then the Commission must conclusively demonstrate that this proposal will have the intended affect.

Furthermore, the Commission is currently obligated under Section 276(B)(1)(a) of the Telecommunications Act of 1996 to prescribe dial around compensation for aggregators. This compensation mechanism is to be in place by November 1996, only four months from now. As testified to previously, AOS rates which exceed AT&T, MCI and Sprint rates for operator assisted calls generally are driven higher by an increased cost component called "commission payments." Commission payments to aggregators are, in general, in excess of 15% of the total call revenue for all AOS providers. Aggregators rising cost of providing publicly available telephones, as a result of the increased incidence of dial around traffic, has been credited as the cause of high AOS rates. If aggregators will now be compensated for all dial around calls, theoretically the demand for subsidizing revenue from AOS traffic will dissolve. A final decision in this proceeding regarding additional branding in this docket may be preceded by the

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[15] 47 C.F.R. §64.703(a)(1)

implementation of this dial around compensation. It would be imprudent for the Commission to take any action which may cause a certain class of carriers to be unfairly discriminated against prior to measuring the response of the industry to the implementation of dial around compensation in November this year.

8. The Commission's proposal is weighted heavily on the unsubstantiated opinions of the Colorado PUC, whose record on Operator Services is far less than Objective

USLD takes issue with the Commission's persistent reliance, in the absence of all other references, to the comments filed on behalf of the Colorado Public Utility Commission in this SFNPRM. Having been the subject of a Show Cause Proceeding [16] in which the same Colorado Public Utilities Commission Staff took regulatory action against USLD as a result of a reported nine consumer complaints during a one year period, [17] USLD finds this particular agency to be inexplicably non-objective regarding the true level of public interest in the AOS industry and its protests and proclamations therefore not necessarily meriting the serious consideration uniquely afforded it by the FCC in this proceeding.

For example, the Colorado PUC Staff states that 30 percent of the complaints it received about OSP rates during the previous two years concerned calls with rates below

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[16] Colorado Public Utilities Commission Docket No. 94C-383T, dated July 26, 1994.

[17] USLD itself only had record of two consumer complaints in the time period cited by the Colorado PUC in the aforementioned state proceeding, for which it had voluntarily provided refunds prior to the Commission's action which amounted to approximately $10.00

the CompTel benchmark. [18] However, CompTel proposed rate caps, established by an independent coalition as representative of the threshold below which no consumer had registered an interstate complaint, are only between 6% and 16% higher than AT&T's highest approved rates for Operator Services in Colorado, casting doubt either on the veracity of the PUCs statistics or the statistical representativeness of Colorado end users.

Furthermore, the Colorado PUC Staff states that "disclosure of prices prior to consummation of a transaction is a basic tenet of our economic system. . . . If new entrants cannot, or choose not to compete on price, then government should not institutionalize inefficiency, anti-competitive behaviors, or guaranteed revenue stream through artificially high rate caps." [19] However, no evidence is offered in support of the Colorado PUC's claim that the current AOS industry is inefficient nor anti-competitive. [20] Furthermore, neither USLD nor any competitive AOS provider could be sensibly characterized as the recipient of a "guaranteed revenue stream." [21] Finally, USLD does

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[18] SFNPRM at 17.

[19] id at 34.

[20] In terms of contributing to the increased private investment in publicly available telephones, USLD cannot term the AOS market as inefficient. The Colorado PUC's argument begs the conclusion that the most "efficient" rates would be zero, regardless of the relationship such rates had to the availability of service and the accessibility to the national communications network, since it fails to address costs. Furthermore, USLD understands that there are more than two hundred alternate operator service providers throughout the United States, yet the Colorado PUC terms the industry in which they operate to be anti-competitive. While the industry model represents a unique situation in the traditionally regulated telecommunications industry, unsubstantiated conclusion regarding efficiently and competitiveness serve to distinguish the Colorado PUC's failure to rationalize public policy's role in an objective and thorough manner.

[21] Colorado concludes in this statement, among other unique arguments, that AOS rates are artificially high. Colorado PUC, however, does not offer any substantive cost related information that

not take issue with the Colorado PUC's statement that price disclosure is a basic tenet of our economic system. In fact, price disclosure is available on AOS calls, as has been required under 47 C.F.R. §64.703(a)(3)(i) for the past six years. Consumers concerned with rate quotes to the extent that such rates will determine whether or not the call will be made, are free to obtain them, just as prices are available for groceries in a grocery store.[22]

Unlike Illinois, Texas or Michigan, Colorado never held an administrative hearing or legislative initiative which broadly solicited comment from the AOS industry. Colorado's AOS policy was created in a vacuum and is therefore unrealistic. [23] Many

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supports this claim. Colorado PUC's entire argument as presented in its Comments filed on April 4, 1995 is characterized as their "opinion," and includes other "opinions" such as advocating the blocking of access code calls from pay telephones in low income areas, and other thought provoking abstractions.

[22] Why then should the grocery clerk also be required to announce the price of the loaf of bread when the consumer could simply read it? Where does consumer protection end and unnecessary government intervention begin? If consumers continue to complain under a system which announces specific prices, following the logic of this argument, the Colorado PUC's next proposal be to require payphones to generate electrical impulses to the end user when rates exceed a certain threshold.

[23] Colorado states "It is our opinion that most, if not all, AOS providers can rate their calls on a real-time basis, ether for purposes of live operator rate quotes or for production of billing data. Therefore, it seems only a minor extension of that system to provide mechanized voice-over quotes for initial period and additional period rates for the specific call in question. The requirement the FCC eventually decides upon should allow for relatively minimal amounts of time for compliance." see footnote 13. As a company subject to a Show Cause proceeding in Colorado, USLD was never requested to provide information as to the ease of implementation of such a procedure. In fact, the systems referred to by Colorado currently are unrelated and would require significant modification to integrate, since the functionality of providing voice-over rate quotes on all calls was never a design consideration for USLD, nor for any other AOS company. This rationalization and conclusion based upon opinion is indicative of the amount of actual verifiable research the Colorado PUC has made concerning this industry and exemplifies USLD's grave

other states have comprehensive, objective and credible records from which the FCC could derive substantive facts regarding the AOS industry.

The Commission states, "On the other hand, the Colorado PUC Staff maintains that its cost studies show that Tier 1 carriers' (MCI, AT&T, Sprint) rates comfortably exceed the cost of providing service, other than commissions and pass-through surcharges." [24] However, USLD understands from testimony offered in the Colorado PUC's Show Cause Proceeding filed against another carrier that the Colorado PUC has not performed a cost study for AT&T operator services in several years. Furthermore, Dominant carrier cost studies in one market cannot be empirically connected to non-dominant costs in another market, and the statement calls for overly broad and ridiculous conclusions. [25]

The Commission cites the Colorado PUC on at least six separate occasions in the SFNPRM, and the proposal set forth by the SFNPRM generally mirrors those which were set forth in the Colorado PUC's Comments in this proceeding dated April 4, 1995. Given the predisposition of the Colorado PUC regarding AOS providers and their inability to document any information which would factually support their arguments, the proposal

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concerns that a federal rulemaking could be modeled after a state regulatory agency misrepresentations of fact through expression of individual opinion.

[24] SFNPRM at 19.

[25] It is troubling to USLD that such an unsupported and irrelevant statement should find its way into a proposed federal rule, offered as the only statement to refute CompTel's position that no cost justification has ever been provided by a regulatory agency to establish the fact that non-dominant AOS costs are comparable to those of AT&T, MCI or Sprint.

set forth in the SFNPRM is built upon an extremely fragile and non-substantive foundation.

9. The FCC's Proposal in the Notice are Unnecessary with respect to the Attainment of certain Public Interest Goals.

USLD understands that the Commission has undertaken this initiative to satisfy what it refers to as "consumer surprise and dissatisfaction for a substantial number of calls." [26] However, USLD suggests that an overwhelming percentage of the "substantial number" of complaints can be attributed to one specific carrier. In fact, the complaints listed in Attachment 1 to the original NAAG Petition mention one particular carrier in 60% of the cases. If the Commission believes it is within its statutory authority to impose rate limitations or other market restrictions upon AOS providers, it stands to reason that it would have done so in the instance of this one carrier If the Commission had reached conclusions that support its proposal after any form of formal or informal investigation of this company, that information should presumably have been offered into the record. The absence thereof suggests either that the Commission has not undertaken to impose further regulatory action against this one carrier, or that it has indeed tried but found that it does not have the authority to do so.

Furthermore, the Commission continues to have before it a proposal put forth by the CompTel Coalition that has the backing and support of respectable industry participants, such as CompTel, Bell Atlantic, NYNEX, and US West. The proposal has been

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[26] SFNPRM at 8.

implemented in other state successfully such that the Commission can create a record supporting the adoption of such action. Enforcement mechanisms have been legitimized by the local telephone companies, and end users interest as gauged by the survey performed by the coalition will be directly and properly addressed.

CONCLUSION

TOCSIA allows the FCC to take action on the "appearance" of unreasonable AOS rates, but specifically defines those actions as limited to the imposition of a secondary announcement that the carrier's rates are available.

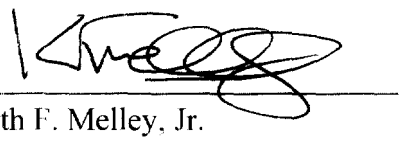
Section 201 of the Act allows the FCC to take whatever action it deems necessary on unreasonable or unjust rates. However in the absence of such a definitive finding with regard to particular AOS rates, the FCC is not authorized to impose the branding requirement proposed in the SFNPRM.

USLD strongly reiterates its unwavering support for the CompTel Coalition proposal filed with the Commission on March 8, 1995. This proposal does not require the FCC to rule on generic rates as they may apply to a wide range of carriers. This proposal has worked in other regulatory jurisdictions. This proposal is enforceable through simple modification of the LEC casual billing system. And the CompTel proposal is supported by the majority of participants in this proceeding.

Inevitable Payphone Compensation, local competition, advent of new technologies and an overall decrease in consumer complaints all support that this proceeding may have outlived its own usefulness. In any event, USLD urges the FCC to

reject the proposal set forth in its SFNPRM, and, secondly, to quickly move towards the adoption and implementation of the CompTel rate cap proposal.

Respectfully submitted,



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July 16, 1996